

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.186 OF 2007

IN

CONTEMPT PETITION NO.128 OF 2006

IN

WRIT PETITION NO.1629 OF 2002

...

Taramati Harishchandra Ghanekar

and ors. ...Petitioners

v/s.

Harshavardhan Bandiwadekar

Partner of M/s.S.B.Brothers & ors..Respondents

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Mr.D.D.Madon i/b S.A. Sawant for the Petitioners.

Mr.V.A.Thorat i/b Upadhyay for Respondent No.1.

Mr.Pandey for Respondent No.5.

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CORAM: D.K.DESHMUKH, J.

DATED: 20TH APRIL, 2007

P.C.:

1. This Notice of Motion is taken out by the Petitioners for condonation of delay in filing the contempt petition. The application obviously has been made under the provisions of Section 5 of the Limitation Act.

2. The facts that are material and relevant for deciding this petition are that the Petitioners had filed Writ Petition (L) No.1190 of 2002 in this court. That petition was disposed of by order dated 18-6-2002. Perusal of that order shows that the present Respondent No.1 had given an undertaking to the court that the construction of the building for accommodating the Petitioners-slum dwellers would be completed and they will be given possession of their respective premises within the period of 24 months from the date of the order. An affidavit to that effect is also filed in the court and the court on

accepting the undertaking disposed of the petition. The Respondent No.1 did not abide by his undertaking within the period that he had undertaking to abide by. That period came to an end on 18-7-2004. The Petitioners have filed contempt petition alleging that the Respondent No.1 has willfully and deliberately committed breach of the solemn undertaking given by him to the court which was accepted by the court. That contempt petition was filed on 6-11-2006. Therefore, this notice of motion has been taken out for condonation of delay in filing the contempt petition.

3. In the affidavit filed in support of the contempt petition the Petitioners have stated that as the Respondent No.1 did not comply with the undertaking given to the court, the Petitioners approached the statutory authority and filed several representations for taking appropriate action against the Respondent No.1. It is submitted by them that pursuant to their representations the Slum Rehabilitation Authority addressed a letter dated 13th December, 2005 to the Respondent No.1 and issued directions to him. According to the Petitioners thereafter also letters were issued by the Slum Rehabilitation Authority. It

is when they realised that neither the Respondent No.1 is willing to abide by his undertaking nor the authorities willing to take any action against the Respondents, they they filed the contempt petition. According to the Petitioners, they are slum dwellers. Some of them were Mill workers and therefore according to them the delay in filing this contempt petition should be condoned.

4. In the reply filed on behalf of the Respondent No.1, the Respondent No.1 has stated that the delay in filing the contempt petition cannot be condoned. He has also denied the contents of the affidavit filed in support of the Notice of Motion.

5. I have heard the learned Counsel appearing for both sides. The learned Counsel appearing for the Petitioners relies on the judgment of the Supreme Court in the case of Pallav Sheth v/s. Custodian & ors, 2003(Supp.) Bom.C.R. 51 in support of his contention that the provisions of Section 5 of the Limitation Act are applicable to a petition under the provisions of the Contempt of Courts Act. The learned Counsel submits that the Supreme Court has in terms held in its judgment in Pallav Sheth's case

that provisions of Section 5 are applicable to a contempt petition filed under the provisions of Contempt of Courts Act.

6. The learned Counsel appearing for the Respondent No.1, on the other hand, submits that the provisions of Limitation Act are not attracted in case the petition filed under the provisions of the Contempt of Courts Act. The learned Counsel submits that the area is fully covered by the Contempt of Courts Act and Rules framed by the various High Courts under the Act. The learned Counsel also invited my attention to three judgments of the Supreme Court, one in the case of State of W.B. and others v/s. Kartick Chandra Das and ors, (1996) 5 SCC 342, another in the case of A.K.Bajpai v/s. State of U.P., (2005) 10 SCC 188, and the judgment of the Supreme Court in the case of Bank of Baroda v/s. Sadruddin Hasan Daya and anr., (2004) 1 SCC 360;

7. Now, so far as applicability of the provisions of Section 5 to the contempt petition are concerned, in my opinion, the observations in paragraph 46 of the judgment of the Supreme Court in the case of Pallav Sheth (supra) are relevant. They read as under:-

46. The record discloses that the custodian received information of the appellant having committed contempt by taking over benami concerns transferring funds to these concerns and operating their accounts clandestinely only from a letter dated 5th May, 1998 from the Income Tax Authorities. It is soon thereafter that on 18th June, 1998 a petition was filed for initiating action in contempt and notice of issue by Special Court on 9th April, 1999. Section 29(2) of the Limitation Act, 1963 provides where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply insofar as, and to the extent to which, they are not expressly excluded by such special or

local law. This Court in the case of Kartick Chandra Das and ors (supra) has held that by virtue of section 29(2) read with section 3 of the Limitation Act, limitation stands prescribed as a special law under section 19 of the Contempt of Courts Act, 1971 and in consequence thereof the provisions of sections 4 to 24 of the Limitation Act stand attracted.

8. Perusal of the abovequoted paragraph shows that the Supreme Court has held that the provisions of Section 29 of the Limitation Act are applicable to a petition filed under the Contempt of Courts Act. It is only sub-section (2) of Section 29 which is relevant for the present purpose. Section 29(2) of the Limitation Act reads as under:-

29(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or

application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

9. Perusal of the above quoted provisions shows that when any special or local law provides for any different period of limitation for filing any application in any court than the period prescribed in the schedule of the Limitation Act, then the provisions of Section 3 apply as if such period were the period prescribed by the schedule and for determining that period of limitation the provisions contained in Section 4 to Section 24 of the Limitation Act apply. Perusal of provisions of sub-section 1 of Section 3 of the Limitation Act shows that it casts a duty on every court to dismiss every suit, appeal or application instituted beyond the period of limitation, but this duty is subject to what is contained in Section 4 to Section 24. Section 5 of the Limitation Act provides that a court may admit an application after the prescribed period if the Applicant satisfies the court that he had sufficient cause for not preferring the application

with the period of limitation. The Supreme Court in its judgment in the case of Pallav Sheth has clearly held that the provisions of Section 4 to Section 24 of the Limitation Act apply to a petition filed under the Contempt of Courts Act. Obviously, therefore, Section 5 will also apply to the petition filed under the Contempt of Courts Act. Perusal of sub-section 2(b) of the Limitation Act shows that application includes a petition. Thus the provisions of the Limitation Act are attracted when the petition is to be filed in a court. The provisions of Section 5, therefore, in terms of the judgment of Pallav Sheth would be attracted. Perusal of the judgment of the Supreme Court in the case of Bank of Baroda referred to above shows that the Supreme Court has referred to its judgments in the case of Pallav Sheth in paragraph 11 and has in fact followed that judgment. So far as two judgments to which my attention was invited by the learned Counsel appearing for the Respondent No.1 is concerned, perusal of the judgment of the Supreme Court in the case of A.K.Bajpai shows that the Supreme Court has not said anything on the question of applicability of the provisions of Limitation Act qua the contempt petition. In any case the judgment of the Supreme Court in

A.K.Bajpai's case cannot be read to say anything contrary to what is said by the Supreme Court in its judgment in Pallav Sheth's case. So far as the judgment of the Supreme Court in State of West Bengal (supra) is concerned, perusal of the judgment of the Supreme Court shows that that judgment has been referred to by the Supreme Court in Pallav Sheth's case. Thus to my mind it clear that provisions of Section 5 of the Limitation Act are applicable in relation to the Contempt Petition filed under the Contempt of Courts Act. So far as the aspect of condonation of delay is concerned, the period of limitation provided by Section 20 is one year. Therefore, the contempt petition should have been filed before 18-6-2005. But it has actually been lodged on 6-11-2006. Considering that the Petitioners are slum dwellers and that they were approaching the authorities who implement the Slum Rehabilitation Scheme and also considering that it is an admitted position, inasmuch as the Respondent No.1 himself has, after the contempt petition, taken out the Notice of Motion in the Writ Petition for extension of time, in my opinion, the delay deserves to be condoned. It is now settled law that the power of the court to condone the delay is to be

liberally exercised so as to advance justice.

10. In my opinion, considering the pendency of Notice of Motion taken out by the Respondent No.1, it would be appropriate for the court to entertain the contempt petition. Notice of Motion is, therefore, granted in terms of prayer clause (a). Notice of Motion disposed of.

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Mr.D.D.Madon i/b S.A. Sawant for the Petitioners.

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...

CORAM: D.K.DESHMUKH, J.

DATED: 20TH APRIL, 2007

P.C.:

1. It is common ground that in Writ Petition (L) No.1109 of 2002 the Respondent No.1 had given an undertaking to complete the construction and hand over possession of the tenements to the Petitioners within a period of 24 months. That undertaking was accepted by the Court. It is also common ground that possession of the tenements has not been handed over within the period of 24 months from 18-6-2003. The Respondent No.1 has, after the contempt petition was filed, taken out Notice of Motion for extension of time allowed by the court. It is further to be seen that the Respondent No.1 was also to obtain necessary completion certificate before handing over possession of the tenements. Within 24 months that has also not been done. According to the Respondent No.1 he has not deliberately committed breach of the undertaking, but because of circumstances beyond his control he could not do it. According to him, even the Petitioners have contributed to those circumstances. In my opinion, in view of the admitted position

indicated above, this petition calls for a detailed hearing.

2. Hence admit. Office to issue show cause notice to the Respondent No.1 to show cause why he should not be tried and punished for having committed contempt of this court. A copy of this order and petition to accompany the show cause notice. Show cause is made returnable after eight weeks from the date of issuance. Matter be placed before the court on the date on which the show cause notice is made returnable.

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